IN THE SUPREME COURT OF THE UNITED STATES

No. 137, Original

STATE OF MONTANA, PLAINTIFF

v.

STATE OF WYOMING AND STATE OF NORTH DAKOTA

ON EXCEPTIONS
TO THE FIRST INTERIM REPORT
OF THE SPECIAL MASTER

MOTION OF THE UNITED STATES AS AMICUS CURIAE
FOR DIVIDED ARGUMENT AND TO PARTICIPATE IN ORAL ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Acting Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae opposing plaintiff's exception, if the case is set for oral argument, and that the United States be allowed ten minutes of defendant Wyoming's argument time. Wyoming has agreed to cede ten minutes of its argument time to the United States if the case is set for oral argument.* Granting this motion accordingly would not require the Court to enlarge the overall time for argument.

Montana's bill of complaint alleges that Wyoming has breached the Yellowstone River Compact (Compact). The Compact regulates the

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* Wyoming is the only defendant claiming argument time: no relief has been sought against defendant North Dakota, and North Dakota is not actively participating at this stage of the case.

allocation of water in the Yellowstone River Basin, including four principal tributaries of the Yellowstone River that flow from Wyoming into Montana. Montana contends that Wyoming has consumed and is consuming more water from two of those tributaries, the Tongue and Powder Rivers, than the Compact permits. Montana alleges four specific ways in which it contends Wyoming has violated the Compact. Wyoming has moved to dismiss the bill of complaint, and the Special Master appointed by this Court has recommended denying that motion in nearly all respects. The Special Master has recommended, however, that Montana not be permitted to go forward on one of its four theories. The Court is considering Montana's exception to the latter ruling.

The United States has participated as amicus curiae throughout this action: At the Court's invitation, the United States filed a brief recommending that the Court grant Montana leave to file its bill of complaint. The United States also filed an amicus curiae brief in partial support of and partial opposition to the motion to dismiss. And the United States has participated, through both written and oral submissions, in proceedings before the Special Master.

The First Interim Report of the Special Master notes (at 13) that the views of the United States are important to the resolution of the disputed issues in this case. The United States has an interest in the correct interpretation of the Compact, an inter-

state agreement negotiated with federal participation, approved by Congress, and possessing the status of federal law. The United States also administers water projects throughout the Yellowstone River Basin that may be affected by the Court's construction of the Compact. Furthermore, pursuant to Winters v. United States, 207 U.S. 564 (1908), the United States also holds certain rights to waters of the Yellowstone River system in trust for the Indian Tribes whose reservations lie in the river basin.

The United States has regularly participated in oral argument as amicus curiae in actions within this Court's original jurisdiction. See, e.g., Alabama v. North Carolina, No. 132, Original (June 1, 2010); South Carolina v. North Carolina, 130 S. Ct. 854 (2010); New Hampshire v. Maine, 532 U.S. 742 (2001); Arizona v. California, 530 U.S. 392 (2000); New Jersey v. New York, 523 U.S. 767 (1998).

In light of the substantial interest of the United States in the issues in this case, and the United States' unique perspective on those issues, oral presentation of the views of the United States would be of material assistance to the Court.

Respectfully submitted.

NEAL KUMAR KATYAL
Acting Solicitor General

JUNE 2010